

OGC 79-10821

3 December 1979

Executive Registry

79-0101/14

OGC Has Reviewed

DD/A Registry

79-0101/14

MEMORANDUM FOR: Director of Central Intelligence

VIA: Deputy Director of Central Intelligence

FROM: [Redacted] Deputy General Counsel

DD/A REGISTRY

FILE: Legal

SUBJECT: Conflicts of Interests: Post-Employment Restrictions

1. The Ethics in Government Act of 1978 contains provisions that restrict certain former Government employees from business contacts with their former agencies for one year after the termination of their employment. Certain officials, those who occupy positions for which the pay rate is the equivalent of a GS-17 or GS-18, are covered by the prohibition only after being designated by their agencies. Other officials, those paid at a rate comparable to Executive Salary Schedule personnel, are covered without such specific designation. The Office of Government Ethics within the Office of Personnel Management, which is responsible for approving these designations and for overseeing compliance with the law Government-wide, has requested that CIA provide a list of CIA positions to be covered by the prohibition and suitable for publication in the Federal Register. This memorandum makes recommendations with respect to such designations and encloses a proposed submission for publication. Since all other positions not exempted by 15 December (the previous deadline of 1 October has been changed so as to give agencies additional time in which to make their designations) are automatically designated, the attached correspondence to the Office of Government Ethics would expressly exempt all officials not designated.

2. The Act and its implementing regulations provide that GS-17 and 18 positions to be designated are those involving significant decision-making or supervisory responsibility. Those positions to be considered for exemption are those in which decision-making responsibility does not regularly extend to major policy issues within the agency or in which supervisory responsibility extends to less than all of a directorate, bureau, or department that has major policy or operational responsibility. In discussions between members of my staff and officials from the Office of Government Ethics, it has been agreed that the cut-off point for designating

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CIA officials would be at least at the level of Deputy Director and Head of Independent Office, as well as their deputies to the extent their positions are at a level equivalent to GS-17 or GS-18. Officials at the component or office level would not be considered for designation because the duties of those positions involve neither significant decision-making responsibility that regularly extends to major policy issues nor supervisory responsibility extending to all of a directorate or comparable unit, within the context of the Act. The heads of such lesser components implement rather than formulate CIA policy.

3. The procedures agreed upon by the Director, Office of Government Ethics for overseeing CIA compliance with the Act have required that OGC compile a complete list of positions, although not the names of individuals, warranting the pay equivalent of a level GS-17 or higher, and including a short description of the duties required for the incumbent of each of those positions. Those lists were made available, solely within the CIA headquarters building, to appropriately cleared personnel to ensure the propriety of our designations. All that remains is a final CIA designation and submission.

4. Accordingly, subject to the Act's prohibitions, but not requiring any express designation in order to be covered, are those officials who are actually paid at a rate equivalent to a rate on the Executive Salary Schedule, regardless of the pay established for their positions. Those officials are listed at the attachment (Tab A) which I have incorporated into a letter that I propose to send to the Office of Government Ethics (Tab B). They include, essentially, Deputy Directors and Heads of Independent Offices. Certain other officials also are included because they are also paid a salary at an Executive Level equivalent.

5. Officials within CIA whose positions warrant the payment of a salary of GS-17 or GS-18 are subject to express designation if these duties involve the formulation of Agency policy. I propose to make designations as follows:

Comptroller and Deputy Comptroller

Director, Office of Public Affairs

Deputy Legislative Counsel

Deputy General Counsel

Deputy Inspector General

The incumbents of those six positions would be designated under the Act because their responsibilities involve supervision over all of a directorate or comparable Agency unit that has major policy or operational responsibility. Included are only the most senior Agency officials, that is, those who report directly to the DCI and DDCI on matters of policy or otherwise. Their deputies also are included because of the likelihood and frequency of their assuming the duties of their principals. Excluded are those deputies whose positions are not classified by the Agency at a level equivalent to GS-17 or above.

6. The intent of the Act is to preclude former senior officials from exerting undue influence over their former subordinates or colleagues in matters affecting their former agencies. In practical terms, the effect of these designations is to preclude all these officials, for one year after their employment ceases, from representing anyone other than the United States before, or in communications intended to influence, CIA in connection with any particular matter that is pending before CIA or in which CIA has a direct and substantial interest. The Office of Government Ethics has maintained that Executive Level personnel are subject to these restrictions as of 1 July 1979, and that GS-17s and GS-18s are covered only if they leave Government service on or after 15 December 1979. While I have expressed some reservation to OGE about the date of the applicability of the Act to CIA executive level equivalents, to my knowledge only two individuals (Bob Bowie and Ted Schackley) could be adversely affected by an adverse ruling. I shall be discussing my concerns with OGE lawyers this week. In any event, the purpose of the attached correspondence is to ensure that the CIA employees not listed will be excluded from the Act's coverage at the time of the 15 December deadline.

ST

7. Accordingly, I recommend you approve the proposed designations.

Attachment

/s/ Stansfield Turner

APPROVED

DISAPPROVED

Director of Central Intelligence

5 DEC 1979

Date

Tab A

Director of Central Intelligence  
Deputy Director of Central Intelligence  
General Counsel  
Inspector General  
Legislative Counsel  
Deputy Director for Administration  
Associate Deputy Director for Administration  
Deputy Director for Operations  
Associate Deputy Director for Operations  
Deputy to the Director of Central Intelligence  
for Resource Management  
Associate Deputy to the Director of Central  
Intelligence for Resource Management  
Deputy to the Director of Central Intelligence  
for Collection Tasking  
Deputy to the Director of Central Intelligence  
for National Foreign Assessment  
Deputy Director of the National Foreign Assessment  
Center  
Chairman, National Intelligence Council  
Special Assistant to the Director of Central  
Intelligence (compartmentation)  
Deputy Director for Science & Technology  
Associate Deputy Director for Science &  
Technology  
Director of Office of Medical Services  
Director of Office of Economic Research